IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ADAM COBB, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	Civil: 1:18-cv-00051-JJM Criminal: 1:16-cr-00006-JJM-PAS

PETITIONER'S REPLY TO THE GOVERNMENT'S RESPONSE

NOW COMES the Petitioner, ADAM COBB, pro se, and hereby SUBMITS to the Honorable Court the instant REPLY in Case Number 1:18-cv-00051-JJM. Petitioner appears pro se and as such PRAYS all favorable construction and application of the instant REPLY from the Honorable Court. See, e.g., Haines v. Kerner, 404 U.S. 519, 520 (1972); United States v. Mosquera, 845 F.2d 1122, 1124-25 (1st Cir. 1988), et al.

Summary of the Reply

1. The Government's Response (Dkt. #93) and its earlier Response (Dkt. #84), incorporated by reference within Document 93 [see page 2, lines 2-5 therein], requires Petitioner to Reply and factually assert that,

(1a) As an operation of legal procedure, the Government has conceded numerous assertions and positions of Petitioner as set forth during this litigation. Unchallenged, they must stand as the law of the case, the res judicata, as this matter proceeds to the Court for adjudication and Final ORDER.

(1b) The Government has, in Documents 84 and 93, made numerous assertions to the Court that are in fact, entirely false. Petitioner posits that these false statements, mischaracterizations, and untruths have all been submitted by the Government attorneys as the official position of the Respondent, who have submitted same knowingly and sworn under penalty of perjury.

2. The Court issued its ORDER of 11/16/2018 (Dkt. # 95) prematurely, in either a plain error or an abuse of discretion, prior to any submission of a Reply to the Government's Response having been filed by Petitioner.

(2a) Although at present the ORDER has been stayed pending the submisison of the instant REPLY, the prima facie indication is that the Court had pre-judged or predetermined the ORDER prior to any judicial analysis and review of a Reply from Petitioner.

(2b) Furthermore, the Court's ORDER (Document 95) applies a judicial finding exclusively based upon Petitioner's **first** Memorandum of Law, without commenting or otherwise recognizing Petitioner's Amended Memorandum of Law. Similar to point (2a) above, the prima facie indication is that the Court's ORDER was further pre-judged or predetermined by the Court, having been authored entirely based on the original Memorandum of Law.

(2c) Finally, the ORDER of the Court, having been apparently based upon the first Memorandum, further indicates that there was no consideration of any of the claims in the Amended Memorandum, insofar as the text of the ORDER does not reflect any contemplation of the legal theories set forth in the Amended Memorandum, and is entirely devoid of any comment or reference to the relevant case law in the Amended Memorandum that should limit, bind, or otherwise direct the Court in its decision.

The Government's Response

The Responses of the Government, insofar as false statements untruths, and mischaracterizations are concerned; and for purposes of refutation by Petitioner, see the point-by-point rebuttal in ATTACHMENT "A". Whether individually or by cumulative measure, the statements by the Government warrant a favorable reading for Petitioner.

The incorporation of false statements, mischaracterizations, and the like are one-half of the Government's strategy, the corresponding part is to avoid the facts and legal arguments by Petitioner, and to rather talismanically recite and repeat salacious details and text.

Neither of these two parts directly address the claims of Petitioner, whether it is Ineffective Assistance of Counsel, conduct of law enforcement, conduct of prosecution, etc. As to Ineffective Assistance, their Response does not provide any

evidence to support their assertion (opinion, not fact) that there were "skillful negotiations" by Counsel, and that there were "several months of intense negotiations." No record of meetings, no record of written communications, no appointment book records, etc. The position of Respondent has been focused exclusively on the length of sentence as the measuring tool for effective assistance. The underlying 'it could have been worse' subtext cannot and does not serve as a valid legal rebuttal. Relying upon outcome-based analysis and not the facts and conduct of Counsel at the time, such a response is mere gainsaying.

The Court in Strickland specifically forbids any post hoc analysis of Counsel's conduct, although the context is usually when such types of assertions are made by petitioners. Nevertheless, as per Strickland, this Court is not permitted to entertain any such post hoc analysis of Counsel's effectiveness based on eventual outcome, but rather to analyze the actions and conduct of Counsel at the moment such conduct occurred, and based exclusively upon what can be proven was Counsel's knowledge of the facts of the case at that time, which, would then either support or not support the presumption that Counsel did, in fact, conduct himself to the prevailing professional norms having conducted (at least to that particular juncture of the case) all necessary investigations or consciously having made the professional decision that such investigations were not necessary. Given this clear instruction from the Supreme Court in Strickland, the Government's position and outcome-based

assertion that Counsel was effective is legally impermissible for consideration by this Court in the instant case. To summarize, neither the Government nor Counsel have provided any documented evidence or sworn affidavits to prove the existence of the aforecited "intense" and "skillful negotiations". And if such negotiations were entered into by Counsel, there is no proof that these were conducted after, or even during, Counsel's investigations of the facts of the case and exploring any legal defenses based upon Counsel's investigations and interviews, and not exclusively relying on the fact-assertions by the Government. Just as Strickland has established that the Counsel for the defendant must make a professional judgment (under prevailing norms) to investigate or determine such investigations are unnecessary, it is also well-settled in Strickland's progeny case law that it is **not** effective assistance to rely entirely upon a review of the Government's case files in making that determinative judgment, or in lieu of defense Counsel's own, independent investigations. Effective Assistance of Counsel is neither a warm body next to a defendant in the courtroom, nor a rubber stamp of passive approval or endorsement of the Government's aims.

Continuing, absent any proof of investigation by Counsel, any advice to effectively admit guilt and enter a plea agreement is categorically deficient to prevailing professional norms. As Petitioner's assertion is that Counsel conducted no meaningful investigations into key elements of Petitioner's case, and in the context that a Movant's assertions are true unless and until

refuted with evidence by the Respondent, the Government has failed to refute Petitioner's assertion that Counsel was ineffective for failing to independently investigate the facts and circumstances of Petitioner's case both prior to and during plea negotiations with the Government, and most saliently, prior to advising Petitioner to enter into a plea agreement - a plea agreement following the advice to waive the filing of an indictment (which may subject the Governemnt's case to some inquiries by the Grand Jurors as to matters of police conduct, jurisdictional concerns, etc.), rather than put the Government's case to the constitutionally-mandated adversarial test.

Petitioner's case, in comparison to numerous cases (in the hundreds) that Petitioner has read during the instant litigation, was unique in many key respects, unique enough to warrant Counsel to conduct investigation of those elements and circumstances on behalf of his client. (This is especially the case if we are to consider in arguendo the Government's position. To wit, the case was 'open and shut', and that "several months" of plea negotiations were taking place.) If it could only serve to assist his client to remove the 'open and shut' case, and that Counsel presumably had several months with which to work, Counsel should have investigated the legality of the airport stop (in furtherance of an ongoing criminal investigation - not a routine border stop - see, United States v. Molina-Gomez, 781 F.3d 13 (1st Cir. 2015)). In both Molina and Cobb's cases, the searches were in furtherance of ongoing criminal investigations, and not

subject to the 'routine border search' rules from United States v. Montoya de Hernandez, (473 U.S. 531, 538 (1985)), nor Almeida-Sanchez v. United States (413 U.S. 266, 272-73 (1973)). As with the above, the other cases cited by the Government in their Response fail to distinguish themselves with Molina and Cobb, but rather distinguish themselves to establish that the only case most closely resembling Petitioner's is Molina. The critical element of 'being in furtherance of an ongoing criminal investigation' is absent from all of the Government's cases. Ergo, their case law fails to support their position in Petitioner's case with its specific details. Conversely, the decision in Molina was published and available to Counsel at the time of Petitioner's proceedings. Counsel's failure was either to know the prevailing law of the First Circuit vis-a-vis his client's unique circumstances, or to fail to investigate First Circuit cases that would provide grounds for a defense, owing to the similarities of the search and underlying circumstances.

Molina applied to Cobb

Molina held that "questioning conducted by the officers in a small, windowless room violated [Molina's] Fifth Amendment rights because he was not given his Miranda warnings prior to being questioned" and that he "was entitled to determine for himself whether he still wished to plead guilty given the suppression of [] statements [made under those conditions]. Molina, 781 F.3d at 13. However, to begin as rebuttal to the Government, their use of Montoya is inapplicable as relates to even where it was applicable in Molina: "'Non-routine searches

by contrast, require reasonable suspicion.'" Molina, at 19 (quoting Montoya, 473 U.S. at 541-41). Here, where Molina as Appellant failed to establish his search as 'non-routine', Petitioner does so eatablish. Molina's case involved the smuggling of narcotics, as did Montoya. In both cases, the the independent assessments of the Border Agents in the commission of their routine duties led directly to the searches and their ultimate extents. Neither Montoya's nor Molina's stop and search were in the context of an ongoing criminal investigation. Cobb's case is opposite on both issues; his was a non-routine search as an extension of an ongoing criminal investigation. Furthermore, Cobb's case (and the subject of the search) involved not drugs, but rather, a cellphone.

Respondent has provided no evidence as to the exact conduct (words and actions) of the border agents in Cobb's case - neither video evidence, audio evidence, nor any sworn affidavits by the officers to refute the description of events set forth by Petitioner.[1] For purposes of this iltigation, Petitioner's account of events, until refuted, is accepted as true. The pre-identification and pre-determination by Border Agents to conduct an investigative stop-search-interview and potential seizure is borne out by the facts, and serves to both dis-prove any assertion that the stop was in any way random or routine, and affirmatively prove the intent aforethought to subject

1 In summary, the automated border-pass service Cobb used (as a D.O.D. contractor) denied Cobb entry, directing him to a Border Agent. That Agent knew Cobb's identity and honorific ("Dr.") -which appears nowhere on his travel documents nor flight manifest- prior to Cobb identifying himself. Cobb was

Cobb to a custodial or investigative interview, outside of the neutral public customs area, and within a customs interview room beyond locked doors and escorted there by customs officials, all of which in furtherance of an a continuing criminal investigation, where, in Cobb's particular case, any and all searching of the cellphone was simultaneously conducted during the custodial interview without any consent or valid warrant, and possibly additional searching after the seizure of the cellphone also without consent nor warrant. Petitioner never signed any waiver nor granted any form of consent to border agents during the custodial interview to search and seize the cellphone. The Respondent in this case has never proven otherwise.

"Both 'custody' and 'interrogation' must be present to require Miranda warnings." Molina, at 18 (citing, United States v. Fernandez-Ventura, 85 F.3d 708, 710 (1st Cir. 1996). Molina continues,

> "Custody exists where there is 'a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.' Though custody is a somewhat amorphous concept, relevant considerations in a custody determination include, but are not limited to, 'whether the suspect was questioned in familiar or at least neutral surroundings, the number of law enforcement officers present at the scene, the degree of physical restraint placed upon the suspect, and the duration and character of the interrogation.'" (citing Fernandez, Id., and quoting United States v. Masse, 816 F.2d 805, 809 (1st Cir. 1987).

(footnote 1 continued) escorted to an interrogation room and questioned, then brought to a second such room -both rooms non-public and non-neutral without windows- and custodially interviewed by numerous agents, with one such agent taking possession of Cobb's cellphone, removing it from his presence and conducting a search of its contents (digital data). The cellphone was seized, no receipt was provided to Cobb, and he was permitted to leave after an interviewing process of approximately two hours.

At this juncture, an evidentiary hearing is called for, in context of Counsel's failures to investigate the Dallas stop, obtain the audio and/or video tape evidence of the stop and interview, and to take depositions from the Dallas officers. A relatively straightforward viewing of the audio/video tapes from Dallas would (a) confirm Petitioner's testimony and assertions about those events; (b) etablish the exact conduct of the officers; (c) establish the exact conditions of the rooms; (d) the questions asked; (e) any Miranda or other waiver issues; (f) location of the cellphone at all times during the interview process; (g) prove that no exigent circumstances existed; and (h), the exact conduct and verbal answers of Petitioner.

Such an examination would clearly establish for the Court Petitioner's assertion that Molina applies respective to the statements of Petitioner per no-Miranda-warning (thereby entitling Petitioner the opportunity "to determine for himself whether he still wished to plead guilty given the suppression" of those statements - Molina 781 F.3d at 13); and would further go to establishing that (a) Counsel was ineffective for NOT investigating these Dallas matters and conducting deposition interviews; to (b) determine if the Dallas stop, due to its circumstances and collective, sequential events rose to the level of being viewed as a custodial arrest for purposes of (b1) Speedy Trial Act calculations and (b2) other extrajurisdictional issues such as arrest without warrant, (b3) failure to arraign in the ND of Texas, and (b4) starting the clock for a defendant to be

brought before a magistrate in the nearest federal court in the District of arrest within the prescribed 3-day period; etc. The unique nature of the Dallas stop, combined with the numerous permutations that could clearly benefit and not prejudice his client, each of which individually or in concert further vitiating the Government's case, videlicet, reducing or removing any benefit the Government sought to gain, after the fact, from the questionable actions of SA Richardson and his directions to the Dallas officers, the events in Dallas, and the conduct of the Dallas officers themselves. Counsel's non-viewing or non-review of the audio/video tapes from Dallas [which necessarily exist per standard HSI policy] cannot be considered a strategic choice after investigation, nor a constitutionally sufficient choice to forego such cursory investigations per prevailing professional norms within the 390 odd days between the Dallas stop (3/4/2015) and the waiver of indictment/plea agreement (4/3/2016). Even with nearly 400 days to contemplate dedicating a couple hours to make the above audio and video review, Counsel found no time, rhyme, or reason to do so. This conduct does not comport with Strickland. The outcome or prejudice prong is satisfied given 'confidence in the outcome' per the Molina renewed opportunity to consider plea or proceed to trial. Lastly, had Counsel engaged his own forensic analyst to examine the cellphone (even if under RISP supervision), he would have been able to establish any illegal search or access to the internal files (in violation of United States v. Wurie / Riley v. California)

pre-dating Magistrate Sullivan's federal search warrant for the cellphone which was (1) granted in the context and understanding that NO search had been conducted prior to the application for the warrant, and (2) granted prospectively only, authorizing access and searching after the execution of the Order and not ex post facto authorizing any earlier pre-warrant searching. Despite any Rhode Island cellphone search/seizure warrant authorization, these above described actions by law enforcement ran afoul of Petitioner's constitutional rights, are opposite to the rulings in Wurie and Riley, and in additional context of the Dallas stop itself, entirely invalidate the cellphone and its contents for purposes of the federal case (even if the cellphone was not so invalidated for the Rhode Island prosecutor, via proper Elkins application, although this point is moot for the instant case.).[1] As with the Dallas stop video tape viewing and its potential for assisting his client, here too Counsel fails to identify the weak points of the Government's case regarding evidence collection and handling, fails to put them to the adversarial challenge [preferring the Government's obtuse and self-serving account of events rather than investigate], and failing to grasp the legal principles that apply, and from which viable strategies could be formulated. Failing to challenge the constitutionality of the cellphone's contents through the legal theory(ies) shown above cannot be considered effective

1 The abosolute lack of federal authorization regarding the cellphone prior to Magistrate Sullivan's ORDER is further evidenced by the Dallas federal AGENTS who have 'presumably' followed legal federal orders and procedures, DO NOT send the phone to federal authorities, but instead to RHODE ISLAND St. Pol.

assistance of counsel. Any plea advice provided by Counsel to Petitioner, in consideration of these failures to investigate and failures to discover the weaknesses in the Government's case cannot be characterized as having provided the requisite plea advice under Brady v. United States and/or Padilla v. Kentucky. Evidentiary hearing is also required to determine the extent and nature of plea discussions and plea advice given to Petitioner by Counsel, not only to establish the basis for Counsel's advice (in a Strickland/Hill v. Lockhart analysis) but also to establish whether Counsel correctly advised Petitioner regarding the waivers (in specific-**not** merely generally) that procedurally attach to the waiver of indictment and also those that attach with the entry of a guilty plea. Most salient to the instant case, the conduct of law enforcement and SA Richardson, and by extention the Dallas officers, and the very connection between Richardson and those agents. These points have all been questionable at best, unlawful at worst as presented in this litigation. In the Strickland context-at-the-time-of-the-advice view, Counsel failed to challenge the actions during the 400 day pendency of the case, and through failing to advice Petitioner of waivers upon accepting a plea, he created a bar for Petitiner to overcome to raise the issue herein. The waiver/forfeiture impact of a guilty plea, once accepted by the court **was** known to Counsel at the time of the advice to Petitioner, but not known to Petitioner until his §2255 research.

This waiver, and others, resulting from the entry of the guilty plea were not a knowing and willful act of Petitioner, and were furthermore a subsequent procedural result to the non-investigated non-government-challenged guilty plea advice of Counsel.[1] Given Petitioner's present claims in the §2255, these failures of Counsel are especially odious. It was both unprofessional and reckless for Counsel to advise Petitioner to enter into a plea agreement without investigation and without clear instructions to Petitioner as to the exact rights he would be waiving upon entry of his guilty plea. See, Tollett v. Henderson, 411 U.S. 258, 267 (1973)(after guilty plea, Petitioner "may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."). In addition to the above search, seizure, evidence handling, jurisdiction, officer misconduct, and non-Miranda statement issues, the waiver also effects the Speedy Trial rights of Petitioner. United States v. Gonzalez-Arimont, 268 F.3d 8, 11-12 (1st Cir. 2001)(speedy trial is non-jurisdictional and waived by guilty plea). As shown below, had Counsel been 'keeping an eye on the (STA) clock', his advice to plead guilty should have been attenuated at least, or at best to not advise Petitioner to plead guilty, both for waiver purposes, but also the contemporaneous developing 5th and 6th Amendment ramifications of Petitioner's case on January 27, 2016.

1 Neither the Gov't nor Counsel have rebutted the plea advice allegations by Petitioner. If not ruled in Petitioner's favor, an Evidentiary Hearing is merited. See, Rivera-Alicea v. U.S., 404 F.3d 1 (1st Cir. 2008)(remand for Ev. Hearing to resolve whether Counsel was ineffective for failing to subpoena witnesses); U.S. v. Wood, 879 F.2d 927 (DC Cir. 1989)(remand to determine if failure to move for suppression is ineffective assistance).

Speedy Trial violations proven by Petitioner have not been disproven by Respondent

Petitioner's reply to the Government's position and argument on the Speedy Trial/Indictment issue contains four elements:

(I) the Fifth Amendment due process analysis for delay;

(II) the time/place of the Speedy Trial/Indictment clock commencement;

(III) the events occurring after that commencement; and

(IV) prejudice.

As a rebuttal to Respondent, Petitioner summarizes his position showing that under either the Fifth Amendment or Sixth Amendment, or a combination thereof, he is entitled to relief, and at a minimum, given the facts and circumstances, the matter is one upon which jurists could possibly disagree.

To begin, any waiver of these issues by Petitioner arose distinctly and subsequentially to the unknowing nature of the plea (per the Brady v. United States; Padilla v. Kentucky, et al. analyses), and that entry into plea agreement arose from Counsel's (1) failure to know the law (border search, border search-in-furtherance-of-an-ongoing-investigation, nature and length of search/investigative interview constituting arrest) and (2) failure to investigate these matters (and others) before, during, and after the Dallas stop, to include witnesses and the participating law enforcement officers. It is under this overarching set of circumstances that Petitioner's claims must be examined.

I. Fifth Amendment/Due Process analysis - with the Criminal Complaint as the formal commencment of the case.

The delay in Prosecution filing the Criminal Information and/or its entry into the record in lieu of Indictment (arising from Counsel's advice to Petitioner to so waive) requires that these events "must be scrutinized under the Due Process Clause, not the Speedy Trial Clause." United States v. MacDonald, 456 U.S. 1, 7 (1982). Actual prejudice to his right to a fair trial [not a trial outcome] resulting from the delay must be shown (United States v. Capone, 683 F.2d 582 (1st Cir. 1982), and bad faith on the part of the Government must be demonstrated. United States v. Ciampaglia, 628 F.2d 632, 639 (1st Cir. 1982), such as the delay was "an intentional device to gain tactical advantage over the accused," (United States v. Marion, 404 U.S. 307, 324 (1972)), or "in reckless disregard of circumstances known to the prosecution, suggesting that there existed an appreciable risk that delay would impair the ability to mount an effective defense." United States v. Lovasco, 431 U.S. 783, 795 n.17 (1977). In Petitioner's case and for this analysis, as no Indictment was ever filed, there was no path to a fair trial, or any trial for that matter (Capone). Petitioner's freedom of movement, employment and ability to earn a living and pay expenses, liberty, and overall pursuit of happiness were all put 'on hold', suspended indefinitely with no indictment being filed and no indication that the case would be dropped. Petitioner was in limbo, placed there as a direct result of the specific course of action chosen

by Prosecution to not indict as a matter of course. Accordingly, Petitioner's stress levels were steadily increased throughout, respective not only to the above (particularly employment and earnings) but also the potential loss of witness memories that Petitioner had hoped to secure through testimony on his behalf or to impeach Government witnesses. This all worked to Petitioner's disadvantage to lessen his resolve to not vigorously challenge or question Counsel's advice, but to instead (with no indictment anywhere on the horizon) accept Counsel's advice to waive the indictment and accept the plea agreement. In short, the Government knowingly and willfully "wore down" Petitioner, measuring their effectiveness possibly from communications with Counsel, where they could infer whether Petitioner was ready to acquiesce. See, Marion; Ciampaglia. Here the 5th Amendment Due Process rights violations and prejudice arising therefrom have been shown. [Witnesses include Maryland accuser; Dallas officers; SA Richardson; U.K Citizen; "unknown recipient"; Rhode Island forensic analysist; Rhode Island search warrant executing officers; over 12 witnesses.]

II. **Sixth Amendment Speedy Trial/Indictment violations**

This analysis first requires the identification of the commencement of that right when a defendant is "indicted, arrested, or otherwise formally accused." MacDonald, 456 U.S. at 6; accord Lovasco at 788; Marion at 320. Parsing out this set of terms for Petitioner's case, there was no indictment. The events in Dallas, arising from the information provided by SA Richardson for Dallas officers to act subsequent to an ongoing Rhode Island search -in

and of itself- can qualify as a 'formally accused' state (given that Richardson's request (as confirmed by the Government's Response) was in furtherance of or an extension of the Rhode Island search/seizure and not strictly one of valid or legal entry into the U.S.), or **alternatively** qualifies as a custodial stop and investigative interview, that, through the events and circumstances of same, arise to the level of arrest, for Miranda and other arrest analysis purposes on March 4, 2015. See, e.g., Molina, supra. at 22 (citing United States v. Pratt, 645 F.2d 89, 91 (1st Cir. 1981).

A second potential operative date for the MacDonald "arrested, or formally accused" date is April 3, 2015, occurring in Rhode Island where Petitioner was taken into custody. **[Note:** in the Responses and filings by Respondent, these two dates "3/4 and 4/3" have been interchanged, whether purposeful or in error, to further confuse matters due to the transposable similarity of the dates in that numerical rendering. The two dates are not the same, and the events on the two days are also different. Most saliently, there was NO ARREST WARRANT at all, under any judicial order in any jurisdiction for Petitioner on March 4, 2015; only a search and seizure warrant for property found in the home of Petitioner and on the premises of his real estate; not his person if he was elsewhere].

The third potential operative date is April 2, 2015, the date the criminal complaint was filed, see, Docket #3.

In short, and absent any adjustments for Excludable Time, the starting points to the wavier and plea date of 1/27/2016 provide:

With Dallas on March 4, 2015 as the operative date, a total of **328 days** elapse prior to January 27, 2016.

With Rhode Island dates of April 2, 2015 or April 3, 2015 as the operative dates, totals of **299 days** or **298 days** (respectively) elapse prior to January 27, 2016.

These will each be examined in turn.

III. **Events after formal accusation**

The Barker v. Wingo (407 U.S. 514, 530 (1972)) test examines four factors: (a) length of delay; (b) reason for delay; (c) defendant's assertion of his right; and (d) prejudice to the defendant. However, neither does the mere existence of one of these factors guarantee "the finding of a deprivation of the right of speedy trial," nor does there exist a requirement that any of these four is an absolute requisite for such a finding. Id. at 533. For purposes of the instant REPLY, (d) has been articulated above; and (c) has been exercised or asserted as soon as Petitioner knew of and could so assert such a right, namely within the §2255.

Excludable Time

Part (a) and (b) of the Barker test are generally examined in tandem as a "double enquiry". Doggett v. United States, 505 U.S. 647, 651 (1992). The reason for the delay establish grounds for deduction of excludable time. "The length of the delay is both the trigger for analysis and one of the factors to be considered."

United States v. Columbo, 852 F.2d 19, 24 (1st Cir. 1988). Following Barker, "a court must still weigh all of the factors before deciding whether a defendant's right to a speedy trial has been violated." Id. at 23.

Given this, the analysis begins with the Speedy Trial Act. The Speedy Trial Act requires the filing of an indictment within 30 non-excludable days and the commencement of a trial within 70 non-excludable days. See, §3161, et seq.

SCENARIO A - Dallas as the operative date

If March 4, 2015 is the operative date, the indictment, per the STA was due by April 3, 2015. As the first motion by the Government in the case for an Extension of Time was April 16, 2015, that element is moot, and no days are excludable. As such, under this analysis, without any request for, nor any order granting an "Ends-of-Justice" extension, the STA was violated as of April 4, 2015. **[NOTE:** the Government's Motion of April 16, 2015 was prospective only, requested no nunc pro tunc application, and was GRANTED as prospective only].

In this Scenario, the STA has been violated, Petitioner was prejudiced, and the case requires DISMISSAL. "The Sixth Amendment provides that all criminal defendants 'shall enjoy the right to a speedy and public trial.' U.S. Const. amend. VI. If the government violates this constitutional right, **the criminal charges must be dismissed.** Strunk v. United States, 412 U.S. 434, 439-40 (1973)(cited, quoted in United States v. Dowdell, 595 F.3d 50 (1st Cir. 2010).

SCENARIO B - Rhode Island, April 3, 2015 as the operative date

In brief, April 3 to April 16 (extension motion day) renders 12 non-excludable days. Between Dkt. 22 and Dkt. 23, 1 non-excludable day. Between Dkt. 24 and 27, there are 5 non-excludable days. Between Dkt. 28 and 29 there are 10 non-excludable days. And from 11/23/2015 to 1/8/2016, there are 3 non-excludable days. [NOTE: this calculation takes into consideration the time where Magistrate Sullivan was taking submitted Motions under consideration, and therefore under the STA, excludable.] See footnote 1.

Additionally, Scenario B is set forth under the premise, in arguendo, that all of the Extensions of Time that were sought were granted for the reasons sought, and were lawful in every respect to the "ends-of-justice" requirements for Excludable Time. Scenario B results in 31 non-excludable days and requires DISMISSAL.

SCENARIO C - Analysis of Extension(s) of Time in context of
i. Respondent's contradictory positions, and
ii. Requirements under the STA

The record shows that the Government sought Extensions of Time to Indict. See, Docket. In the §2255 litigation, the Government has stated the Extensions were for Plea Negotiaitons, and specifically not to obtain an Indictment, going so far as to boast in their Responses that an indictment "would have been easy to obtain" had they chosen to do so. Before continuing with the STA Sixth Amendment analysis, Petitioner asks the Court to consider this willful choice to not indict in light of the

1 Scenario B1 - if April 2, 2015 is determined to be the operative date, given the content of the Docket on that date, then 32 non-excludable days had occurred by January 27, 2016. Scenario B provides 31 non-excluable days. Both scenarios require DISMISSAL. Dowdell citing Strunk, supra.

Due Process Fifth Amendment analysis set forth supra. as a manipulation to entirely avoid the STA strictures (by choosing to not indict) thereby denying Petitioner his Due Process rights to be in position to invoke his Sixth Amendment Speedy Trial STA rights. See MacDonald, Capone et al. supra. Here, the actions of the Government violated the "fundamental conceptions of justice which lie at the base of our civil and political institutions and which define the community's sense of fair play and decency." Lovasco, 431 U.S. at 789-90.

Returning to the Sixth Amendment STA analysis, this Circuit has stated,

> "The statutory grounds for exclusion of time from the speedy trial clock 'are designed to take account of specific and recurring periods of delay which often occur in criminal cases; they are not to be used either to undermine the time limits established by the Act, or to subvert the very purpose the Act was designed to fulfill.' Henderson v. United States, 476 U.S. 321, 333 (1986). Accordingly, we have repeatedly cautioned that neither counsel nor district courts may employ measures for excluding time from the speedy trial clock that impermissibly frustrate the STA's purpose of protecting the shared interest of criminal defendants and the public in 'bringing criminal charges to the bar of justice as promptly as practicable.'" United States v. Richardson, 421 F.3d 17, 29 (1st Cir. 2005)(citing Henderson v. U.S.; and United States v. Hastings, 847 F.2d 920, 923 (1st Cir. 1988).

More recently, this Circuit has specifically commented on

> "§3161(h)(7)3 -- commonly referred to as the 'ends-of-justice' provision -- permits the court to exclude delays resulting from continuances granted 'on the basis of [the judge's] findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.' 18 U.S.C. §3161(h)(7)(A). As a **permissive**, **rather than automatic**, exclusion, the

> trial court is required to affirmatively 'set[] forth, in the record of the case, either orally or in writing, its reasons' for granting an ends-of-justice continuence." United States v. Valdivia, 680 F.3d 33, 39 (1st Cir. 2012).

Valdivia continues that a court "need not recite a formulaic recitation of the ends-of-justice language, but it **must articulate the reasons that support** an ends-of-justice continuence." Id. at 40, citing Zender v. United States, 547 U.S. 489, 506-07 (2006) (holding that "the Act requires express findings," and that a mere "passing reference to [a] case's complexity" would be an insufficient basis); and United States v. Pakala, 568 F.3d 47, 60 (1st Cir. 2009 ("[A] district court must make on the record findings justifying the grant of 'ends-of-justice' continuence."). The finding must be contemporaneous to the original case, and cannot be supplied ex post facto on remand or §2255 review. Zender, at 506.[1] The first matter is one of determining whether the stated request in the Extension motions match the Docket or the recent position of 'plea negotiations' in this §2255. They cannot be both. Neither can the Magistrate grant any Extension for either purported purpose without making the requisite findings and also stating her reasons for Granting the Extension. Continuing, the Magistrate cannot grant the request based upon grounds never submitted in the request (abuse of discretion), nor substitute the ground which she would deny for one that she would grant, on behalf of the Government (abuse of discretion).

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1 Petitioner's Discovery Motions under Rule 6 were partially submitted to determine and establish the grounds under which the Extensions were submitted, the grounds under which they were granted, and any stated reasons underpinning any on-the-record findings.

As to the Government's position in this litigation, that the Extensions were sought for Plea Negotiation purposes, it must be noted that within the First Circuit, plea negotiations are not automatically excludable within the meaning of being 'clear or obvious', thereby affirming that Magistrate Sullivan definitely was required to state her reasons for granting any excludable time Extensions for plea negotiation purposes. Valdivia, 680 F.3d at 42; United States v. Huerte-Sandoval, 668 F.3d 1, 7 n.8 (1st Cir. 2011). In any analysis, it is one determining abuse of discretion based on 'reasonableness'. United States v. Barnes, 251 F.3d 251, 256 (1st Cir. 2001)(reasonableness serves as the touchstone of an 'ends-of-justice' analysis); United States v. Vega Molina, 407 F.3d 511, 532 (1st Cir. 2005)(STA excludability determinations are reviewed for abuse of discretions). Material errors of law invariably constitute an abuse of discretion. United States v. Snyder, 136 F.3d 65, 67 (1st Cir. 1998).

If Motions for Extensions of Time were made for Obtaining an Indictment **(or)** Plea Negotiations the Motion must have been granted for that same reason, to include the reasons set forth by the Magistrate in order to warrant the Ends Of Justice excludability, **and furthermore**, followed by the conduct by the Government that aligns directly with the purpose set forth in their request motion.

Most directly, if Magistrate Sullivan granted Ends-of-Justice extension with reasons in the record for Obtaining an Indictment,

and instead, the Government engaged in Plea Negotiations, those days are **not excludable** by the legal operation that the Magistrate did not grant the Extension under those terms, and as such could not have made any reasons in the decision known in the record, for the simple fact that the decision was made on other grounds. The two reasons for Extensions in question are not interchangable **nor even work toward the same goal.** They are mutually exclusive.

If no reasons were set forth, the time is non-excludable per the error of the Magistrate (given that plea negotiations are not automatically excludable). If, however, the Government requested on one ground, but actually used the time for another purpose, then the (a) time is non-excludable as described above, and (b) is further prejudicial to Petitioner and a willful circumvention of the STA by the Government.

Alternatively, if the eight extensions were for plea negotiations occurring prior to the filing of the criminal information (they were), the 5th Amendment Due Process deprivation has occurred. #1 no clear documented set of charges put before the Defendant, memorialized in writing from which/upon which he could know what he is being charged with and prepare a defense; #2 a circumvention of the STA rights of Defendant, no indictment= no defendant's motion for dismissal; #3 the elements enumerated herein and in Strunk; #4 state of perpetual delay and stagnation of case and other Barker prejudice factors. See also, United States v. Scott, 180 F.Supp. 3d 88, 95 (Dist of Mass., 2015)

(pretrial delay can be considered presumptively prejudicial, alleviating any need to analyze the other Barker factors)(citing United States v. Munoz, 487 F.3d 25, 60 (1st Cir. 2007)

Conversely, if the Responses are to be accepted as the Government's final position, that there was no indictment sought at all (regardless of any alleged theoretical ease to so obtain), the above four points are proven by different, deductive means.

Lastly, if the Extensions were for indictment purposes, sought and granted for same, to include stated reasons by the Magistrate, any use of that time for plea purposes in lieu of seeking an Indictment satisfied Petitioner's 5th Amendment Due Process claim, that the Government did not act in good faith.

A comparison to another case from this District demonstrates the straightforward and standard method for these STA matters. The case is especially relevant as it involved both Magistrate Sullivan, and AUSA Ari Goldstein (who also participated in the prosecution of Petitioner). In United States v. Beverly, U.S. Dist. LEXIS 62142 (Dist. of RI, 2015), the Government sought an Extension of Time for plea negotiations prior to indictment. Magistrate Sullivan granted a continuence for plea negotiations. When plea negotiations were unproductive, "a hearing was held before Judge Sullivan during which the Government moved, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, to dismiss the complaint without prejudice because the grand jury could not be convened until the following [day]." Subsequent

to that dismissal by Magistrate Sullivan, the Government in turn filed a new complaint and also filed an indictment. From the Government's point of view, this type of approach successfully navigated the STA respective to pre-indictment plea negotiations. "Therefore, the Speedy Trial Act was not violated." Id. This raises questions regarding the handling of Petitioner's case. Qui bono? Is it adventageous for unceasing extensions to be sought and utilized by the Government? Yes, for the very reasons within this case, from the indictment waiver to the plea agreement, to the subsequent unknowing waiver of constitutional and non-jurisdictional claims occurring before the plea agreement. Originally in this litigation, Petitioner read and considered Beverly, and presumed that the prosecution in his case would have conducted themselves similarly, that is to say, with no bad faith or manipulative techniques, and instead to deal fairly with the Defendant (innocent until proven guilty) with 'clean hands' and in full candor to the Magistrate and Court. As such, Petitioner believed (due to Beverly) that the Government really did try to secure an Indictment. Per the Responses, that was never the case. Failure to indict was not a 'failure' per se, it was a purposeful and willful strategy by the Government to achieve the conviction by other means, and entirely absent any meaningful challenge by Counsel, as Petitioner's instant REPLY and other submissions prove. When the aforementioned techniques by the Government, their non-indictment gamesmanship as it were are met with non-investigatorial and non-advocating Counsel, the conviction is all but guaranteed. This conviction must be overturned and the entire case fully dismissed.

Prayer for Relief

WHEREFORE, in consideration of the facts, law, circumstances, and discussion herein and previously submitted, Petitioner humbly PRAYS the Honorable Court

1. **GRANT** the instant Motion under 28 U.S.C. §2255 and **DISMISS** the criminal case in its entirety; alternatively,
2. **ORDER** an **EVIDENTIARY HEARING**; alternatively,
3. **ISSUE** a **CERTIFICATE OF APPEALABILITY** in consideration of the numerous claims and issues upon which reasonable jurists could disagree;

and any additional **RELIEF** to which Petitioner may be entitled, deemed fair and equitable by the Honorable Court.

It is so prayed.

Respectfully submitted,

_____ 20 FEB 17

ADAM COBB, Petitioner pro se

DATE

ATTACHMENT A

ATTACHMENT A

The following text is a point-by-point refutation of the Government's two Replies

Document 84

1. P2, Lines 10-12. The Defendant was prejudiced in many ways. For example, denial of Due Process. When due process is deprived, the outcome does not matter. It destroys all confidence in all later proceedings, to include the outcome.

   It should not be considered an "achievement" when, as in this case, defense counsel has assisted or contributed to the deprivation of due process for his client.

2. P4, Lines 1-8. (See also P5, Para. 1). "Several unauthorized electronic devices". Elsewhere (Dkt 93) the government discusses numerous cell phones. But they stop short in these five instances, that (1) the electronic devices were not newly acquired after the first police search of the house, (2) the cell phones themselves were not activated for current use on any cell phone network, (3) the only cell phone activated at the time of Petitioner's arrest was the one in his posession when he was trevelling and none of the older deactivated devices at his house, (4) there was no contraband data of any sort on the aforementioned deactivated devices, (5) the bail conditions violated as referred to in Lines 4-7, have nothing to do with the reasons stated by the government. Respective to contact from Petitioner to the other party, the Court

ultimately ruled that contact would not create any public safety factors.

3. P3-4, Lines 8-12. As stated in the Response on page 3, the "rights he was waiving" were not enumerated by the Magistrate, nor are they required to be. Ergo, any lack of knowledge of those rights falls squarely on the conduct of defense counsel regardless of the level of academic achievement of a defendant in a field other than the Law. "The defendant admitted that the facts the prosecutor recited were true". Counsel never provided any prior warning or legal advice regarding the Government's content and wording of the 'facts'. Petitioner was never shown, or had read to him by Counsel prior to the hearing any versions of the Government's assertion, neither did Petitioner have a written version of the same during the hearing to read and contemplate, rather than unexpectedly react to a set of statements for which he was never prepared. The only advice from Counsel was to 'say yes' and to 'agree' and that any arguing would 'make things go bad'. Petitioner's conduct at the hearing, to include his answers to the Magistrate were entirely at the direction of Counsel who had failed to prepare Petitioner for the hearing and failed to inform Petitioner exactly of the rights, benefits, and privilages he would simultaneously be waiving upon waiving the indictment. Had the presentment by the prosecution been a surprise to Counsel, then in that scenario Counsel failed to make oral motion to the Court, for a few minutes to go over it with

his client; simultaneously preserving the matter and prosecutor's conduct for the record.

4. P4-5, Lines 18-19 and footnote 3. Respective to ICAC and the Government's reliance on that See the Opinion of Supreme Court Justice Gorsuch in United States v Ackerman, 831 F.3d 1292 (10th Circuit 2016). Procedurally Petitioner is allowed to reply to this as a rebuttal to a new element introduced by the Government.

5. P5, Lines 4-7. The Response states that "Police requested and obtained a search warrant for his home, which was executed on March 5, 2015. The warrant authorized the seizure and search of all electronic devices at the premises, including cell phones." The police were Rhode Island Police, and despite the footnote by the Government ("ubiquitous practice nationally.. to cooperate on joint investigations") this Rhode Island investigation was NOT a joint investigation, and no representation of it being "joint" was made to, nor authorized by the Rhode Island Judge who signed the Search Warrant. Futhermore, the date was March **4th.** The seizure was for those at the premises, not elsewhere, and did not include an arrest warrant for Petitioner anywhere.

6. P5, Footnote 4. The Government cited the federal search warrant, signed by Magistrate Judge Sullivan on March 18, 2015. This is a search warrant for an iPhone illegally obtained in a non-routine airport search/seizure in a custodial arrest event at the behest of SA Richardson directing the Dallas Federal officers to execute in Dallas Texas, a premises-based Warrant issued

by a Rhode Island Judge for a Rhode Island residence absent an arrest warrant for the resident himself, in which the State warrant made no mention of, nor provision for, any extrajurisdictional action by any officer. The iPhone was obtained not as an element of a random stop, but in furtherance of an ongoing investigation, and absent a federal warrant. The iPhone was searched in Dallas, and Petitoner asserts, elsewhere as well. Counsel failed to obtain the iPhone and subject it to the proper computer forensic analyses to prove the illegal searches by law enforcement occuring prior to the issuance of Magistrate Sullivan's March 18, 2015 search warrant. The internal data of the iPhone would have proven the Government's conduct in respect to the phone, its data, and the copying of the data by law enforcement officers/agents. Both the federal search warrant and instant footnote err in omission by failing to provide an accurate and truthful description as to the nature, circumstances, and events (both in RI and TX) respective to the seizure of the iPhone and the implications of an arrest having already occured. Otherwise, without an arrest having already occured in Dallas, the seizure of the iPhone in the original instance was an unauthorized, extrajurisdictional expansion of the RI search warrant. There was no endorsement of the RI warrant by any federal Magistrate or Judge in the Northern District of Texas nor the District of Rhode Island.

7. ¶6, Lines 2-4. In comparison on the previous page the Govern-

ment has stated (conceeded) that the individual was a 17 yr old citizen of the United Kingdom, in this section that same individual is still the same age and contextually was of the age of consent of the sovereign nation of which she was a resident and citizen.

8. P6, Lines 9-14. The oversimplification by the Government is again an error of ommission or misrepresentation of events. The dynamic complexity of what transpired (1) from the commencement of the RI search to (2) SA Richardson analysing evidence "gathered to that point" to (3) SA Richardson knowlingly and purposefully forgoing legal channels (i.e., receiving a telephone warrant from a Judge or Magistrate either in Dallas or alternatively, within the Federal District of RI to authorize such action that would otherwise not be legal, due to jurisdiction and limitations of a RI state warrant which has full force and effect **only** within the geographical state of RI). SA Richardson "requested a border search of Cobb take place at the airport", however he has no judicial nor executive branch discretionary authority to so order.

9. P6, Lines 12-18. The Government has made assertions regarding Petitioner's copduct in interactions with Government agents in Dallas. These assertions are nothing more than heresay. There is no factual basis for these assertions and the Government has not submitted any evidence (audio tapes, video tapes or even sworn affidavits from any of the Dallas agents) as to the veracity and accuracy of these actions.

10. P6-8. There is a needless comingling of the UK citizen who is not a part of the convicted count in the instant case and (1) being a UK citizen is not a minor for the purposes of a US federal prosecution, and (2) appears only through indirect reference under relevant conduct of Petitioner (beyond the appearance of this yet again in the prosecution's position, it demonstrates Counsel's failings to have the foreign national non-minor removed entirely from these matters. This failure by Counsel led to the wrongful inclusion of this relationship in the relevant conduct). Through the use of comingling the Government is trying to establish the appearance of two victims, where due to the UK citizenship and age, that individual was entirely precluded from being a victim because statutorially any conduct with her could not meet the relevant fact or elements-of-the-case criteria to be the basis of a child pornography prosecution. See also P13, Lines 18-19 "two seperate minors". To this end, the prosecution devotes much of its response, including the entirity of page 7, to conduct between Petitioner and the UK citizen, whereas by comparison, alleged conduct by Petitioner to the Maryland resident refers to 28 words, only 7 of which are cited as a direct quote.

11. P9, Line 4. This conduct fails on its own terms/grounds in so far as the Government states that the nature of the communications were a "relationship" where in actuality they nothing more than mere communications. Futhermore, on Page 9

they insinuate that persuant to an interview with that individual that she terminated communication. This too is factually wrong. Within Lines 2-11 there is further evidence of Defense Counsel constitutional ineffectivness for failing to challenge or even investigate Government claims. See, Line 2-3, "The US victim was later interviewed and indicated she posed and did the particular described acts at the request of the defendant." Defense Counsel never conducted an interview to verify the Government assertions as to the contents of the interview and her testimony prior to ruling out proceeding to trial. That is a clear failure to investigate. The identity and whereabouts of this individual were known to the Government and said individual would be subject to interview and deposition had Defense Counsel so requested. These two elements, regarding the UK citizen and Maryland individual, establish that Counsel's one sided advice to not only not proceed to trial but to furthermore waive an indicement were not based on **any** independant investigative interview. In constructing the "defense" Counsel never separated the metaphorical 'wheat from the chaff' to determine the **actual** strength of the Government's case. Defense Counsel did not engage in adversarial conduct in this most critical of matters, namely to interview the accuser. The Constitution provides that the accused has the right to face their accuser. Without investigation, Defense Counsel waived this having determined that Petitioner's constitutional rights were unecessary.

12. P9, Line 7. The Government **again** refers to the "unknown receipient". To fulfil the elements of the charge there needs to be an indentification that any electronic transmission of contraband did in fact have a successful, documented, and identifiable place or person of receipt. This position is an absolute fraudulency in that for the Government's case to commence there had to be an individual whose identity was known at some point to law enforcement whereupon the criminal information could be based. If there is no evidence of receipt, or if the recipient is unknown, **then there is no evidence.** An "unknown" individual cannot make an accusation nor submit evidence to the Government without also revealing their identity even if it were only to clear the name of the receipient. Moving forward, in Petitioner's case, that same receipient would need to be produced for purposes of availability for interview by Defense Counsel as well as being made available for evidentiary hearings and trial. The Government cannot make a quasi-identification of there being a receipient, yet in the same breath claim that said receipient is unknown to them. Furthermore, this technique cannot be used as a profalactic to protect the "unknown recipient" from federal prosecution and use his his testimony in the case against Petitioner.

How this applies in the Ineffective Assistance of Counsel analysis is that the Government **did know** this persons identity, were

required to provide that name to Defense Counsel as a potential witness who would testify against his client and reveal any agreements with the "unknown receipient's" attorney respective to supplying evidence or testimony against Petitioner, quid pro quo, in return for a promise of non-prosecution. None of this occured as a wilful act of the prosecution, or alternatively, this person's identity was informall known to Counsel and Counsel elected not to investigate or interview "unknown receipient" and to confirm through examiniation of cell phone records that (1) his client (Petitioner) did send files to this individual, (2) Petitioner knew this individual, (3) that both Petitioner and "unknown receipient" acted in good faith and without malice, and (4) that "unknown receipient" also did not believe that there was any illegality in the files or the receipt thereof otherwise he would have reported the matter to law enforcement rather than wait for law enforcement to contact him. The above 4 points, if not based on identification as provided by the Government presumably could have still been made by Counsel based exclusively on the identification provided by his client (Petitioner) or through additional forensic examination of cell phone service provider data.

13. P9, Line 7. In respect to the 4 photos send to an "unknown receipient" (and 2 more the following day) Petitioner sent such photo's under best knowledge and contemperanious good faith that subject of said photo's was of legal age for all intents and purposes. These 6 images were sent only after

the subject the subject of the photography, of majority age in her home state, specifically authorized Petitioner to make screen capture files and only with those two collabrotive points did Petitioner believe that the transfer of such materials was fully authorized and ergo, legal.

14. P13, Line 14-16. The Government has engaged in an exaggerated speculation to which no evidence exists, such as where the Government asserts "an indictment would be simple to obtain in this case", further exaggerating that "this Court knows" that to be a fact. The record shows the Court accepted a guilty plea pro forma after initial screenings and the management of the proceedings by Magistrate Sullivan. The Court has no direct knowledge about the ease to obtain an indictment not the "prodigeous strength of the evidence" alleged by the Government. Upon entering a plea, a defendant removes any such burden of evidence, examination and constitutionality of all previous proceedings from the Court.

15. P14, Lines 3-7. The Government alledges any and all delay in going to a Grand Jury was at the request of Defense Counsel. The evidence and the record prove otherwise. The requests for extensions "to indict" were exclusively authorized by the Office of the US Attorney and **not** Defense Counsel. Furthermore, they were exclusively requested for time to seek indictment and not plea negotiations as falsely stated by the Government in this excerpt.

16. P16, Lines 10-13. The Government states "no search was made

until the search warrant was obtained". The Government has provided **no proof** for this assertion. Alternatively, Defense Counsel never challenged the Government on this issue, the lack of evidence thereof nor independant forensic examination of the iPhone to establish otherwise. They have not provided video/audio documentation of events in Dallas, nor affidavits of the officers involved, to confirm any authorization given by Petitioner for iPhone searches at the Dallas airport. Neither has the Government provided evidence in the negative by either data arising from the RISP forensic examination nor affidavit from that examiner to confirmedly establish there was no access to the phone at any time between Petitioner's departure from the Dallas interview area on 4 March, 2015, up to and including the actual authorization by Magistrate Sullivan in the search warrant application on 18 March, 2015.

Certificate of Service

I, ADAM COBB, hereby declare and affirm under penalty of perjury and in accordance with 28 U.S.C. §1746 that the foregoing is a true and accurate document to the best of my knowledge, understanding, and recollection, and that a true copy of same has been filed with the Office of the Clerk, and served upon the Office of the United States Attorney via the United States Postal Service first-class mail with prepaid postage affixed thereunto.

Placed in the U.S. Mail on this date: 21 FEB 19.

ADAM COBB

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* **NOTE:** Pro se Petitioner ADAM COBB has no access to PACER, nor to the ECF system. All data to and from the United States District Court; Office of the Clerk; and/or the Office of the United States Attorney shall be conducted by postal service via the United States Postal Service.

Per Bureau of Prisons/FMC Lexington regulations, Pro se Petitioner ADAM COBB has no access to Overnight Mail service, nor Two-Day Mail service, nor any mail or parcel service by or through private companies, e.g., Federal Express, U.P.S., D.H.L., et al.